

Appl. No. 10/383,439
Atty. Docket No. AA496C
Amtd. dated 1-21-2004
Reply to Office Action of 7-21-2003
Customer No. 27752

REMARKS

Claims 1 – 10 are pending in the present application. No additional claim fees are believed necessary.

With regards to the objection to Claims 5 and 9 under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention, Claims 5 and 9 are now amended in order to clarify that the composition further comprises a viscosity modifier or a conditioning agent, respectively. Support for this amendment can be found in the Specification on pages 18, lines 34 to page 20 line 33 and page 37, lines 26 to page 38, line 2, respectively. Applicants kindly request reconsideration.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

35 U.S.C. § 103(a)

Claims 1-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hitchen (U.S. 6,106,816) in view of Karlen et al. (U.S. 6,004,545), Rath et al. (U.S. 5,993,792) and Reng et al (US 5,403,508).

The Examiner has asserted that while Hitchen teaches shampoo compositions comprising copolymers of carboxylic acid such as Carbopol 1342, an aqueous carrier, visible particles, viscosity modifiers, silicon compounds, propylene glycol and cationic conditioning agents, Hitchen does not teach an amphoteric conditioning polymer. The Examiner asserts that it would have been obvious to a person of skill in the art to add Merquat Plus 3300 to the composition of Hitchen to achieve the beneficial effect of an amphoteric conditioner in view of Karlen et al. and to add a pearlescent dispersion comprising fatty acid glycol esters and polyethylene glycols having a molecular weight between 200 and 800 to achieve the beneficial effect of an excellent pearlescent effect in view of Reng et al. As to the other claimed "further comprising" ingredients, the Examiner has asserted that it would have been obvious to one of ordinary skill to further include such compounds in the composition of Hitchen to achieve the extra beneficial

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effect of these additives in view of Rath et al. Applicants respectfully traverse this assertion.

In order to establish a prima facie case of obviousness, the Examiner must show that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there is a reasonable expectation of success, and (3) all of the limitations of the claims are taught or suggested in the prior art (M.P.E.P. § 2143).

Applicant respectfully traverses this obvious rejection as Hitchen in view of Karlen et al., Rath et al. and Reng et al does not establish a prima facie case of obviousness because they do not teach or suggest all of the Applicant's claim limitations and there is no motivation to combine reference teachings.

Hitchen relates to shampoo compositions. Hitchen discloses an aqueous shampoo composition comprising, in addition to water, a surfactant chosen from anionic, nonionic, or amphoteric surfactants, and mixtures thereof, an insoluble, nonvolatile silicone, a suspending polymer chosen from polyacrylic acid, cross-linked polymers of acrylic acid, copolymers of acrylic acid with a hydrophobic monomer, copolymers of carboxylic acid – containing monomers and acrylic esters, cross-linked copolymers of acrylic acid and acrylate esters, and heteropolysaccharide gums, and titanium dioxide coated mica.

However, Applicants have previously submitted that Hitchen does not disclose a humectant comprising a polyethylene glycol having a molecular weight of up to about 1000, as now amended and required in the present invention. Examples 8-11 of Hitchen disclose propylene glycol only. Nor does Karlan et al or Rath et al. teach a humectant as required by the present invention.

Rath et al. discloses that the object of the invention is to provide pearlescent dispersions which are free from fatty acid alkanolamides and nevertheless have the properties of the known pearlescent dispersions, such as low viscosity, good storage stability and excellent pearlescent effect. Rath et al. teaches that it has been found that when fatty acid alkanolamides are used, nitrosamines, which are a health hazard, can also be formed because of the residual amounts of secondary amines present. It has also been

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found that when the customary fatty acid alkanolamides are used, such as coconut fatty acid monoethanolamide, the formation occurs of relatively large crystals which tend to separate out to an increased extent and on the other hand bring about a low optical density, i.e. a low yield. Therefore the object of the Rath et al. invention is to provide pearlescent dispersions which are free from fatty acid alkanolamides and nevertheless have the properties of the known pearlescent dispersions, such as low viscosity, good storage stability and excellent pearlescent effect.

There would be no motivation by one of skill in the art to look to a disclosure that is concentrating on improving pearlescent dispersions due to the negative impact of fatty acid alkanolamides, in order to arrive at the present invention. The Examiner has asserted that Reng et al discloses low molecular polyhydric alcohols, in particular polyethylene glycols having molecular weights between 200 and 800, and therefore one of ordinary skill in the art would look to Reng et al, and further in view of Hitchen, and Karlen and Rath et al., would the present invention be disclosed. However, there is no motivation or suggestion in the Hitchen, Karlen et al. or Rath et al. references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings with that of Reng et al. Reng et al is directed to solving a problem due to the presence of fatty acid alkanolamides. One of skill in the art would not be motivated to look to the Reng et al disclosure, which is clearly solving a problem due to the presence of fatty acid alkanolamides, and determine that the addition of a polyethylene glycol having a molecular weight of up to about 1000, would provide the present invention with the benefits that this humectant has been found to provide in the present invention i.e. provide less stickiness.

In particular, Hitchen does not disclose a humectant comprising a polyethylene glycol having a molecular weight of up to about 1000, as now amended and required in the present invention. Further, none of the references, alone or in combination teach a humectant comprising a polyethylene glycol having a molecular weight of up to about 1000.

Therefore, there is no prima facie case of obviousness since for Hitchen, in view of Karlen et al., Rath et al. and Reng et al. there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art, to modify the reference or to combine reference teachings. In particular, there is no motivation to combine the teachings of Reng et al which is directed at solving a problem as related to the presence of fatty acid alkanolamides.

In light of the arguments presented herein, it is respectfully submitted that the rejection of the claims under 35 U.S.C. § 103(a) be withdrawn.

Therefore, in light of the arguments presented herein, it is respectfully submitted that the rejection of the claims under 35 U.S.C. § 103(a) be withdrawn.

Conclusions

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the claim objections and rejection under 103(a). Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and distinguish their claimed invention from the prior art which was applied in the July 29, 2005 Office Action. WHEREFORE, consideration of this application, amendments filed herein, withdrawal of the rejections under 35 U.S.C. § 103(a), and allowance of Claims 1-10 are respectfully requested.

Respectfully submitted,

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